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FISCAL IMPACT STATEMENT

LS 7038

BILL NUMBER: HB 1148

NOTE PREPARED: Jan 1, 2015

BILL AMENDED:

SUBJECT: Bail.

FIRST AUTHOR: Rep. Frizzell

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill provides that, if a court admits a defendant to bail, the court may require the defendant to do one of the following as selected by the defendant:

- (1) Execute a bail bond with sufficient solvent sureties.
- (2) Deposit cash or securities in an amount equal to the bail.
- (3) Execute a bond secured by real estate in the county, where thirty-three hundredths of the true tax value less encumbrances is at least equal to the amount of the bail.
- (4) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than 15% of the bail.

The bill also provides that, if a defendant: (1) was admitted to bail by depositing cash or securities; and (2) has failed to appear before the court as ordered; the court shall declare the bond forfeited 120 days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

It specifies that, under the law concerning bail and bail procedure, a court: (1) may declare a bond forfeited only if a defendant fails to appear before the court as ordered; and (2) may not declare a bond forfeited because the defendant fails to perform any other condition of bail.

It makes conforming amendments.

Effective Date: July 1, 2015.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: Any increase in the use of bail potentially decreases the number of defendants in the jail population. The increase in the percentage of the bond that must be deposited to execute a cash bail bond could reduce the number that use a cash bail bond. However, those defendants may select a different method of providing collateral to secure release on bail. Additionally, defendants in more counties may have access to bail, as the defendant rather than the court would select the method of collateralization.

[Using jail inspections prepared by Department of Correction (DOC) staff in CY 2007 and by a jail inspector under contract with the Indiana Sheriffs' Association in CY 2009, it is estimated that about 75% of the jail population is comprised of defendants awaiting trial.]

Explanation of Local Revenues: Currently, defendants admitted to bail by deposit of cash pay up to 10% of the amount deposited, not to exceed \$50, as an administrative fee.

Fewer defendants may elect to deposit cash as bail as a result of the increase to 15% for the deposit. On the other hand, more defendants may select cash in counties where the courts currently only allow security bonds. Any change, then, cannot be calculated because the change in the number of defendants selecting cash cannot be determined.

Additional Information - Bail Bonds and Collateral: Bail bond orders are the set of terms and conditions decided by a judge in order to release a defendant from jail between the time of arrest and the time of the case judgment. Bail bonds usually involve some sort of collateral supplied by the defendant to ensure that the defendant appears in later court proceedings and agrees to the conditions of release.

This collateral can come in the form of: (1) a cash bond, where all the bail money is posted up front; (2) a property bond, where property equal in value to the bond is offered; or (3) a surety bond issued by a bondsman who posts bond for a defendant in exchange for a nonrefundable premium.

Under the bill, the defendant could select the method of securing the bail bond. Defendants selecting a cash bail bond would deposit 15% of the bail with the clerk of the court instead of 10% set in current law. The defendant would have to produce more cash, which may lead more defendants to select another form of collateral.

Bond Administration Fee: Under current law, when a defendant deposits a cash bond, the court collects a bond administration fee of up to 10% of the monetary value of the bond or \$50, whichever is less. The fee is deposited in the county or local unit general fund, depending on the court collecting the fee.

Counties Potentially Affected: The bill will affect counties differently, depending on the use of cash bonds or bail bonds (surety). A survey of counties found that in 34 counties the courts do not allow surety bonds. The remaining counties, on average, have about 30% or fewer of all defendants using bail bonds.

The number of counties and the number of accused persons that this bill could affect are not known. Since the clerk of the circuit court can retain a bond administration fee, revenues of the clerk could be reduced. In CY 2012, 71 counties reported to the Indiana Supreme Court that they were collecting the bond administration fee.

	CY 2009	CY 2010	CY 2011	CY 2012
Revenue from Bond Administration Fee (in Millions)	\$1.49	\$1.35	\$1.38	\$1.43
Number of Counties Reporting Revenue	61	63	66	71

State Agencies Affected:

Local Agencies Affected: Trial courts with criminal jurisdiction; county sheriffs.

Information Sources: *2012 Revenues and Expenditures and Trial Court Fee Manual*, accessed on the State Court Administrator's website; Christa Coffey, *Survey of Surety Bond Use by Counties, DOC Annual Inspection of Jails*, Paul Downing, Criminal Justice Planner, DLZ Indiana.

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